IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 1351/2006
(Naresh Vs. State of Rajasthan)

Date of Order : 12/10/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. M.K.Garg for the petitioner.
Mr. Ashok Upadhyay, public prosecutor for the State.

BY THE COURT:-

Issue notice for final disposal. Mr. Ashok Upadhyaya, public prosecutor accepts notice. With the consent of parties, this criminal miscellaneous petition under Section 482 Cr.P.C. is heard and decided at the admission stage.

By the instant petition under section 482 Cr.P.C. the petitioner has challenged order dated 5.10.2006 passed by Judicial Magistrate First Class, Gharsana (for short 'the trial court' hereinafter) whereby while allowing the application filed by the petitioner under Section 457 Cr.P.C., the trial court ordered to release the Mini Truck bearing No. RJ-07-G 8620 in favour of the petitioner provided the petitioner furnishes a bank guarantee in the sum of Rs.2,50,000/- as also on certain conditions

incorporated in the order. Aggrieved by the impugned order directing the petitioner to furnish the bank guarantee, the petitioner has filed the instant petition.

I have heard learned counsel for the parties.

It is contended by the learned counsel for the petitioner that the petitioner is the registered owner of the truck in question which alleged to have been found carrying 87.20 Qtl. of Kikar wood “babul” in contravention of the provisions of the Forest Act and the petitioner is not an accused in the case. It is also contended that as per the Notification dated 19.1.1991 issued by the State Government, “babul” has been exempted from the forest produce under the Rajasthan Forest (Produce Transit) Rules, 1957 (for short 'the Rules, 1957 hereinafter). Learned counsel further submits that the petitioner is not in a position to furnish such a huge bank guarantee and therefore, in the facts and circumstances of the case, the condition imposed by the trial court to furnish bank guarantee of Rs. 2,50,000/- is onerous and the vehicle in question may be released in favour of the petitioner on Supurdginama.

Rule 3 of the Rules, 1957 pertains to exemption from forest produce and provides that in exercise of the powers conferred under the proviso to rule 2 of the Rules, 1957, the State Government exempts transportation of forest produce of the following species for destination within the State of

Rajasthan; namely Eucalyptus, Su-Babul, Ardu, Vilaiti Babul, Israeli Babul, Deshi Babul and Shisham.

This Court in Jeet Singh Vs. State of Rajasthan 2006 (2) R.Cr.D. 274 (Raj.) without going into the question as to whether the goods being transported in the vehicle, in fact, is a forest produce or not as defined in the Rajasthan Forest Act, held that the condition of furnishing bank guarantee is onerous and accordingly the condition of bank guarantee has been set aside and vehicle has been ordered to be released on Supardginama.

Having regard to the facts and circumstances of the case, it is yet to be established in the trial as to whether the wood carried in the vehicle or transported, are forest produce or not, more particularly keeping in view the Notification dated 19.1.1991 as also Rules 3 of the Rules, 1957 by which the babul is exempted from the category of forest produce, in my view, directing the petitioner to give the bank guarantee of Rs. 2,50,000/- appears to be a condition onerous and therefore, the ends of justice would be met if the vehicle in question is released in favour of petitioner on supurdginama.

In the result, the order impugned dated 5.10.2006 passed by the trial court is modified to the extent that instead of giving bank guarantee of Rs. 2,50,000/-, the truck in question shall be released in favour of the petitioner on Supurdinama on his furnishing a personal bond in the sum of Rs. 2,50,000/- along

with one surety in the like amount to the satisfaction of the trial court with the stipulation therein that during the pendency of the criminal case, neither alienate nor transfer the said truck and keep it in good condition and he will produce the truck in question as and when directed by the trial court.

With the above modification, the petition is disposed of.

(H.R.PANWAR),J.

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